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Myron Brough v. Ramon R. Appawora : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT

OF THE STATE OF UTAH

MYRON BROUGH, Plaintiff and Respondent, vs. RAMON R. APPAWORA, Defendant and Appellant.	Case No. 14434

APPELLANT'S BRIEF

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Appeal From the Order of the Fourth Judicial
District Court for Uintah County
Honorable Allen B. Sorensen, Judge

* * * * * *

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IN THE SUPREME COURT

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MYRON BROUGH, Plaintiff and Respondent, vs. RAMON R. APPAWORA, Defendant and Appellant.	:	Case No. 14434

APPELLANT'S BRIEF

* * * * * *

STATEMENT OF THE NATURE OF THE CASE

Plaintiff, a non-Indian, claims injury from an accident occurring within the Uintah and Ouray Indian Reservation. The defendant is an enrolled member of the Ute Indian Tribe and challenges the jurisdiction of the lower court to render judgment in this case.

DISPOSITION IN THE LOWER COURT

A default judgment was entered on September 9, 1975, in the District Court of Uintah County against defendant and in favor of plaintiff for $28,800.00 general and special damages and for $33.00 costs of Court. On or about October 22,

1975, defendant appeared specially and moved the Court, pursuant to Rules 55(c) and 60(b) of the Utah Rules of Civil Procedure, to set aside the default and default judgment and to dismiss the action on the basis of lack of jurisdiction over the defendant and the subject matter. Memoranda were submitted to the Court by both parties and the Court heard oral argument of the Motion on December 9, 1975. The defendant appeals herein from the Order of the Court dated December 12, 1975, which denied said Motion. Said Order erroneously refers to the Motion as having been made by the Ute Indian Tribe, not a party to this suit, when it was in fact made for and on behalf of the defendant Ramon R. Appawora. The record verifies that there was but one motion filed to vacate the judgment, notwithstanding the fact that the Order of December 12, 1975, refers to "motions on file."

RELIEF SOUGHT ON APPEAL

Defendant-appellant seeks a reversal of the Order of the District Court denying defendant's Motion to Dismiss, and, thereafter, the dismissal of this action.

STATEMENT OF FACTS

The accident which gave rise to this action occurred on November 13, 1974, on a county road right-of-way in Uintah County at a location 2 miles south of Fort Duchesne, Utah (Record pp. 22 and 30, hereafter references to the record

will be as follows: "R.___"). The uncontradicted evidence before the Court below is that this location, "2 miles south of Fort Duchesne, Utah", is located entirely within the exterior boundaries of the Uintah and Ouray Reservation (R. 20). The Uintah and Ouray Reservation is the Indian Reservation which is the residence of the Ute Indian Tribe of the Uintah and Ouray Reservation (R. 20).

That evidence further shows that the defendant, Ramon R. Appawora, was and is an enrolled member of the Ute Indian Tribe of the Uintah and Ouray Reservation (R. 18 and 19), and that his residence (R. 18), and the place where service of process was accomplished by a Uintah County Sheriff's officer (R. 3), are located at Randlett, Utah, which is also located entirely within the exterior boundaries of the Uintah and Ouray Reservation (R. 20). The plaintiff is not an Indian.

The uncontradicted evidence further shows that the Ute Indian Tribe of the Uintah and Ouray Reservation is a federally recognized Indian Tribe exercising the powers of self-government within the exterior boundaries of the Uintah and Ouray Reservation, and that said Tribe has a functioning Tribal Court which has civil jurisdiction over all cases involving enrolled members of the Tribe (R. 20).

Finally, the uncontradicted evidence before the trial court shows that the Ute Indian Tribe has never held an

election accepting Utah state jurisdiction over itself or its members pursuant to 25 U.S.C. Section 1321 et seq. or Section 63-36-9 et seq. Utah Code Annotated 1953, or otherwise granted, ceded or surrendered its jurisdiction to the State of Utah (R. 21).

ARGUMENT

THE DISTRICT COURT ERRED BY IMPROPERLY ASSUMING JURISDICTION OVER THE DEFENDANT, AN ENROLLED UTE INDIAN, IN AN ACTION ARISING ON AN INDIAN RESERVATION.

POINT I

THE ACCIDENT GIVING RISE TO THIS ACTION OCCURRED IN INDIAN COUNTRY WITHIN THE UINTAH AND OURAY RESERVATION.

The accident which is the subject of this action occurred on a county road right-of-way within the exterior boundaries of the Uintah and Ouray Indian Reservation. The law is well settled that a road right-of-way is part of the Indian reservation for purposes of determining the applicable jurisdiction to hear a case involving an Indian.

Under federal law "Indian Country" is defined as follows:

> ....[T]he term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communites within the borders

> of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (18 U.S.C. Section 1151)

In a footnote in its recent decision in the case of DeCoteau v. District County Court, 420 U.S. 425, 43 L. Ed. 2d 300, 304, fn 2, 95 S. Ct. ___ (1975), the U.S. Supreme Court noted as follows:

> If the lands in question are within a continuing "reservation," jurisdiction is in the tribe and the Federal Government "notwithstanding the issuance of any patent, [such jurisdiction] including rights-of-way running through the reservation." 18 U.S.C. Section 1151(a) ***. While Section 1151 is concerned, on its face, only with criminal jurisdiction, the Court has recognized that it generally applies as well to questions of civil jurisdiction. [Citations]

The North Dakota Supreme Court, reversing an earlier opinion which held that the state courts had jurisdiction over a civil case involving an automobile accident occurring on a state highway within an Indian Reservation, has stated as follows:

> There can be no doubt that state highways within the boundaries of a reservation are part of the reservation. "Indian Country" is defined by Federal law as being all land within the limits of an Indian reservation under jurisdiction of the United States Government, "including rights-of-way running through the reservation,..." 18 U.S.C.A. Section 1151. Gourneau v. Smith, 207 N.W. 2d 256 at 258 (N. Dak. 1973).

See also Schantz v. White Lightning, 231 N.W. 2d 812 (N. Dak. 1975).

The Ninth Circuit Court of Appeals has recently likewise held:

> [W]e note that the fact that the events of interest here may have occurred within the right-of-way for a state highway avails the defendant nothing. Rights-of-way running through a reservation remain part of the reservation and within the territorial jurisdiction of the tribal police.
> Ortiz-Barraza v. U.S., 512 F. 2d 1176, 1180 (9th Cir. 1975).

The decision in Seymour v. Superintendent, 368 U.S. 351, 7 L. Ed. 2d 346, 82 S. Ct. 424 (1962), specifically held that fee patented land located within a township within an Indian reservation had not lost its status as part of the Indian reservation. This decision is based, in part, upon relevant language in 18 U.S.C. Section 1151 (cited, supra) which states that not only rights-of-way, but fee patented lands as well, within an Indian Reservation, retain their status as "Indian country" and remain part of the reservation.

This position has been followed in the supreme courts of the states as well. See, e.g., Kain v. Wilson, 161 N.W. 2d 704 (S. Dak., 1968), which held that state courts had no jurisdiction to hear and determine a civil action by a non-Indian against a tribal Indian for alleged wrongful use and possession of land located in "Indian country," even though a patent had

issued to the land in question and title thereto was vested in the non-Indian plaintiff.

This court recognized that a state highway running through an Indian reservation is a part of the reservation in the case of State v. Roedl, 107 Utah 538, 155 P. 2d 741, 743 (1945). The case involved U.S. Highway 40 running through the Uintah and Ouray Reservation referred to as the "Uintah Indian Reservation" by the court.

Based on the established facts in the record and applicable law, there is no question but that the incident in question herein involves a Ute Indian defendant in a cause of action arising on and within the Ute Indian Reservation.

POINT II

FEDERAL AUTHORITY AND TRIBAL SOVEREIGNTY PREEMPT EXERCISE OF STATE JURISDICTION.

The appropriateness of looking to federal law in any case involving an Indian on his reservation, stems from the express reservation of authority by the U.S. Constitution, to the Congress "To regulate commerce with foreign nations, and among the several states, and with the Indian tribes." Article I, Section 8, Clause 3, U.S. Constitution. See e.g., Williams v. Lee, 358 U.S. 217, 219, fn 4, 3 L. Ed. 2d 251, 79 S. Ct. 269 (1959) and McClanahan v. Arizona Tax Commission, 411 U.S. 164, 172, fn 7, 36 L. Ed. 2d 129, 93 S. Ct. 1257 (1973).

The U.S. Supreme Court has held on numerous occasions that:

> It is thoroughly established that Congress has plenary authority over the Indians and all their tribal relations, and full power to legislate concerning their tribal property. The guardianship arises from their condition of tutelage or dependency; and it rests with Congress to determine when the relationship shall cease; the mere grant of rights of citizenship not being sufficient to terminate it. Winton v. Amos, 255 U.S. 373, 391-2, 65 L. Ed. 684, 41 S. Ct. 342 (1921).

It is equally well established that:

> When Congress has once established a reservation, all tracts included within it remain a part of the reservation until separated therefrom by Congress. United States v. Celestine, 215 U.S. 278, 285, 54 L. Ed. 195, 30 S. Ct. 93 (1909).

See also Seymour v. Superintendent, 368 U.S. 351, 7 L. Ed. 2d 346, 82 S. Ct. 424 (1962), Mattz v. Arnett, 412 U.S. 481, 37 L. Ed. 2d 92, 93 S. Ct. 2245 (1973), and DeCoteau v. District County Court, 420 U.S. 425, 43 L. Ed. 2d 300, 95 S. Ct. ___ (1975), reaffirming this point.

The classic case denying state courts jurisdiction over reservation Indians for civil cause of action arising in the Indian's reservation, is Williams v. Lee, 358 U.S. 217, 3 L. Ed. 2d 251, 79 S. Ct. 269 (1959). In this case, the U.S. Supreme Court reversed a decision of the Supreme Court of Arizona which had held that Arizona courts had jurisdiction of a civil suit against reservation Indians for goods sold to

them by a non-Indian operating a store on the reservation.

> There can be no doubt that to allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over reservation affairs and hence would infringe on the right of the Indians to govern themselves. It is immaterial that respondent is not an Indian. He was on the Reservation and the transaction with an Indian took place there. *** The cases of this court have consistently guarded the authority of Indian governments over their reservations. 358 U.S. at 223.

The doctrine of Williams v. Lee in a situation such as this case presents has been strengthened since it was pronounced in 1959. The Supreme Court has consistently held that the sole means by which a state can acquire civil jurisdiction over reservation Indians for cause of action arising on the reservation is by following the requirements of 25 U.S.C. Section 1321 et seq. As stated in McClanahan v. Arizona Tax Commission, 411 U.S. 164, 180, 36 L. Ed. 2d 129, 93 S. Ct. 1257 (1973):

> Appellee cites us to no cases holding that this legislation may be ignored simply because tribal self government has not been infringed. On the contrary, this court expressly rejected such a position only two years ago. [Kennerly v. District Court, 440 U.S. 423 (1971), see infra.]

The footnote following this statement states:

> Indeed, the position was expressly rejected in Williams, itself, upon which appellee so heavily relies. Williams held that "absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them. [Citation] Id., footnote 21, [Emphasis the Court's.]

Clearly then, the right enunciated in Williams v. Lee is a right which must be viewed from the perspective of the individual Indian himself, rather than from the tribal point of view. The right is that of the individual Indian to have the tribal court of his reservation hear and decide cases against the Indian arising on the reservation. The Navajo Tribe, as a Tribe, had no more interest in the debt which was the subject matter of Williams v. Lee, than does the Ute Tribe in the auto accident which is the precipitating event herein. The Supreme Court in Williams v. Lee denied jurisdiction to the Arizona state courts because they did not have jurisdiction, whether a distinct tribal interest in the transaction was involved or not.

The plenary power of Congress exercised in its trustee relationship to American Indians has so pervaded the field of Indian affairs so as to completely preempt the state from encroachment into reservation matters, except upon such condition as the Congress itself may dictate. See 25 U.S.C. Section 1321 et seq. discussed below.

The federal government, on the other hand, has continued to recognize tribal sovereignty and the right of Indians to govern themselves. See e.g., Indian Self-Determination Act, 25 U.S.C. Section 450 et seq. As this court has observed in Allen v. Merrell, 6 Utah 2d 32, 305 P. 2d 490, 493 (1956):

The Indian tribes have not entirely lost their character as sovereign entities, but retain a substantial degree of autonomy under which they may and do operate independent of state government. They have the power to adopt a constitution, enact tribal laws to which members of the tribe are subject, to prevent the sale or alienation of tribal lands, and to negotiate with federal, state and local governments. They also have the power to tax, to employ counsel and to prosecute actions for the tribe. As recent as March 6, 1956, the U.S. Court of Appeal for the Eighth Circuit in the case of Iron Crow v. Oglala Sioux Tribe of Pine Ridge Reservation stated, "We hold that the Indian tribes, such as the defendant Oglala Sioux of the Pine Ridge Reservation, South Dakota, still possess their inherent sovereignty excepting only where it has been specifically taken from them, either by treaty or by Congressional Act. [231 F. 2d 89, 94 (8th Cir. 1956)]

The Utah Supreme Court has also noted:

> [I]t is the uniform holding of the courts that, so long as Indians maintain their tribal relations, the courts will recognize the tribal customs prevailing and administered by such tribes.
>
> ***
>
> They [the Indians] were and always have been, regarded as having a semi-independent position when they preserved their tribal relations; not as states, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people, with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union or of the state within whose limits they reside. (U.S. v. Kagima, 118 U.S. 375). In re: Wo-Gin-Up's Estate, 57 Utah 29, 192 Pac. 267, 270-1, (1920). [Emphasis added.]

POINT III

UTAH STATUTES PROHIBIT EXERCISE OF STATE JURISDICTION WITHOUT FORMAL TRIBAL CONSENT

The Congress of the United States has authorized the states to assume jurisdiction over Indian country provided both

the state and the tribe consent to such jurisdiction:

> The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State. 25 U.S.C. Section 1322(a).

In response to this 1968 federal law, the Utah State Legislature in 1971 enacted Sections 63-36-9 through 63-36-17, U.C.A. 1953 (1975 Pocket Supplement). Specifically, Section 63-36-9 U.S.A. provides:

> The state of Utah hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, country and lands or any portion thereof within this state in accordance with the consent of the United States given by the act of April 11, 1968, 82 Stat. 78-80 (Public Law 284, 90th Congress), to the extent authorized by the act and this act.

The term "Indian Country" is used in both the federal and state statutes (compare to cases applying 18 U.S.C. Section 1151 as noted above).

Section 63-36-13 deals with the subject of "Civil jurisdiction" and states as follows:

> The state of Utah shall assume jurisdiction over civil causes of action as set forth in this act, between Indians or to which Indians are parties in the lands described in each tribal resolution sixty days after issuance of the governor's proclamation to the same extent it has jurisdiction over civil causes of action as elsewhere within the state. The civil laws of the state shall have the same force and effect within such lands as they have elsewhere within the state, except as otherwise provided by this act.

The Utah act and the federal act establish necessary conditions precedent before the assumption of jurisdiction will be effective. Both 25 U.S.C. Section 1326 and Section 63-36-10 U.C.A. 1953 require that a tribal consent election be held before state jurisdiction may be applied to the reservation and its Indian residents. 25 U.S.C. Section 1326 makes the following requirement:

> State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 percentum of such enrolled adults.

Section 63-36-10, in conformity with the federal statute, provides as follows:

> State jurisdiction acquired or retroceded pursuant to this act with respect to criminal offenses or civil causes of action shall be applicable in

> Indian country only where the enrolled Indians residing within the affected area of such Indian country accept state jurisdiction or request its retrocession by a majority vote of the adult Indians voting at a special election held for that purpose. All special elections shall be called pursuant to federal law.

Section 63-36-11 imposes the additional requirement that the Governor of the State formally accept the "cession of jurisdiction" and thereafter issue a proclamation defining the extent of the assumption by the State.

As indicated in the Statement of Facts, the uncontradicted evidence before the District Court was:

> That the Ute Indian Tribe of the Uintah and Ouray Reservation, has never accepted Utah State Jurisdiction over itself or its members pursuant to 25 U.S.C. Section 1321 et seq. or Section 63-36-9 et seq. U.C.A. 1953, or otherwise granted, ceded or surrendered its jurisdiction to the State of Utah. (R. 21)

Absent such acceptance of jurisdiction, the district court could neither assume nor exercise jurisdiction over defendant, an enrolled reservation Indian, for a cause of action arising on his reservation.

The absolute mandatory nature of the requirement of a tribal election as a precondition to state assumption of jurisdiction over Indians on their reservation is stated explicitly in the case of Kennerly v. District Court of Montana, 440 U.S. 423, 27 L. Ed. 2d 507, 91 S. Ct. 480 (1971). This case arose when suit was commenced in a Montana state court

against members of the Blackfeet Tribe to recover a debt arising from the purchase of groceries in a store in Browning, Montana, a town incorporated under Montana law, but located within the exterior boundaries of the Blackfeet Reservation. In 1967, the Blackfeet Tribal Council had passed a resolution apparently giving the Montana state courts concurrent jurisdiction over suits against members of the Tribe. The Montana trial and supreme courts upheld jurisdiction over the Indians.

The U.S. Supreme Court vacated the judgment solely because the procedures specified in 25 U.S.C. Section 1326 had not been followed, in that no tribal consent election was ever held. Absent such election, the court held, the State of Montana could not assume or exercise its court jurisdiction over the defendant reservation Indians, despite the consent of the Tribal Council. In the present case, not only is a tribal consent election absent, but there has never been any attempt by the Ute Tribal Business Committee to cede or grant jurisdiction to the State of Utah.

The North Dakota Supreme Court has considered this issue several times in recent years and each time held against state court jurisdiction. In Gourneau v. Smith, 207 N.W. 2d 256 (N. Dak. 1973), the North Dakota Supreme Court held not only that the state highways within the boundaries of an Indian reservation were in fact part of the reservation for

jurisdictional purposes, but that, absent compliance with 25 U.S.C. Section 1321, et seq., the state courts could not exercise jurisdiction over claims arising out of an automobile accident involving an Indian defendant which occurred within the exterior boundaries of an Indian reservation.

Likewise in Schantz v. White Lightning, 231 N.W. 2d 812 (N. Dak. 1975), the North Dakota Supreme Court considered facts on "all fours" with the present case:

> whether or not the North Dakota courts have jurisdiction of an action brought by a non-Indian against an enrolled Indian residing on an Indian reservation for injuries resulting from a motor vehicle accident which took place on a state highway within the limits of the Indian reservation on which the enrolled Indian resided. 231 N.W. 2d at 814.

As in its other cases, the North Dakota Supreme Court ruled against state court jurisdiction, noting as follows after citing to the Williams and McClanahan cases:

> [A]ny change from the present case law would require action by the United States Congress. The appellants are asking this court to assume the duties and responsibilities which are vested solely in the United States Congress. The arguments presented should be addressed to that body. 231 N.W. 2d at 815-6.

Plaintiff in this case had previously attempted to obtain a remedy in both the state and federal courts. See Schantz v. White Lightning, 386 F. Supp. 1070 (D.C.N.D. 1973), aff'd, 502 F. 2d 67 (8th Cir. 1974).

The Montana Supreme Court in Blackwolf v. District Court,

493 P. 2d 1293 (Mont. 1972), ordered the dismissal of a case in state juvenile court against enrolled Indians for acts of delinquency allegedly committed within the exterior boundaries of their reservation, even though the tribal juvenile court had "remanded" the case to the state juvenile court. The court noted that the procedural prerequisites of 25 U.S.C. Section 1321 et seq. had not been followed by either the state or the tribe, and stated as a preliminary premise to its decision as follows:

> At this point we emphasize that all matters concerning the exercise of jurisdiction by state courts over enrolled Indian citizens who reside within the exterior boundaries of an Indian reservation are controlled solely by federal law, as to acts or transactions within the exterior boundaries of the reservation. 493 P. 2d at 1294 Emphasis the court's.

In the case of Wauneka v. Campbell, 526 P. 2d 1085 (Ariz. Ct. of App. 1974), the court held that Arizona cannot enforce its motor vehicle laws or its safety responsibility act against Navajo Indians on their reservation, absent compliance with 25 U.S.C. Section 1321, et seq., despite the fact that the Navajo Tribe had incorporated certain parts of the Arizona Motor Vehicle laws as the law of the Tribe.

In Poitra v. Demarrias, 502 F. 2d 23 (8th Cir. 1974), the Circuit Court reversed the refusal to assume jurisdiction by the federal district court in an action between reservation

Indians for wrongful death arising out of an automobile accident occurring on an Indian reservation, noting that, because of the State of North Dakota's failure to fulfill the requirements of 25 U.S.C. Section 1321 et seq., the courts of the State of North Dakota would not have had jurisdiction.

The North Dakota Supreme Court even went to the extreme of denying jurisdiction in a case involving the voluntary consent of the Indian defendant to the jurisdiction of the state court in Nelson v. Dubois, 232 N.W. 2d 54 (N. Dak. 1975). In that case, non-Indian plaintiffs sued an enrolled Indian defendant for a claim arising out of an automobile accident occurring on a state highway within the exterior boundaries of the Fort Totten Indian Reservation. The defendant Indian had signed a form giving her consent to state jurisdiction pursuant to a state statute which provides that such consent may be obtained from individual Indians. The relevant tribal court could only exercise jurisdiction for cases under $300.00 in amount. The North Dakota Supreme Court held that, absent compliance with 25 U.S.C. Section 1326 by tribal consent election, the state courts could not exercise jurisdiction over the defendant Indian even though no other judicial forum existed in which the plaintiffs could get relief. The court noted the language from the McClanahan decision quoted above and concluded as follows in response to the contention that the test of Williams v. Lee should be applied

only when there is a demonstrable interference with tribal sovereignty, rather than mere failure to comply with 25 U.S.C. Section 1326:

> Thus, it may be seen that the Williams test of "infringement" or "interference" has for all practical purposes, been abandoned. Public Law 90-284 applies to the assumption of jurisdiction by any state over any Indian reservation and as to any subject matter. It is difficult to envision a clearer statement of federal preemption. Thus, we are unable to read beyond the opening phrase of the Williams test in an effort to find "residuary" state jurisdiction. 232 N.W. 2d at 58.

Finally, a recent article in the Utah Law Review, "Civil Jurisdiction and the Indian Reservation," 1973 Utah Law Review, Summer, p. 206 at 221, notes as follows:

> The rule of Williams v. Lee -- limiting jurisdiction in reservation-based contract cases between Indians and non-Indians exclusively to tribal courts -- has been extended to reservation based torts. Thus, if an automobile accident between an Indian and a non-Indian were to occur on a reservation, the state court would be precluded from exercising jurisdiction if the non-Indian were to sue first. Since the state court lacks subject matter jurisdiction, it would make no difference if the Indian defendant were to be served with process off the reservation.

POINT IV

STATE OFFICERS CANNOT VALIDLY SERVE STATE PROCESS ON AN INDIAN ON HIS RESERVATION.

The Colorado Supreme Court in Martin v. Denver Juvenile Court, 493 P. 2d 1093 (Colo. 1972), held that a summons served on an enrolled member of an Indian tribe by a deputy

sheriff, on the Indian reservation where the Indian resided, did not give the state juvenile court jurisdiction over the Indian in a paternity action, even though conception was alleged to have occurred off of the reservation.

In Annis v. Dewey County Bank, 355 F. Supp. 133 (D.S.Dak. 1971), the federal court enjoined enforcement of a state court judgment against an enrolled reservation Indian. The court noted that the procedural prerequisites of 25 U.S.C. Section 1321, et seq., had not been complied with and denied jurisdiction even though the security agreement in question was signed off of the reservation, its breach occurred off of the reservation, and the Indian was served with state process off of the reservation. The court stated that

> This argument fails to recognize that the actual attachment by state officials must be made on the reservation and state officials have no jurisdiction on Indian reservations either to serve process on an enrolled Indian or to enforce a state judgment. 355 F. Supp. at 135-6.

POINT V

ADEQUATE REMEDIES ARE AVAILABLE TO PLAINTIFF IN TRIBAL COURTS

As shown by the evidence presented to the District Court below (see R. 20), the Ute Indian Tribe has a functioning Tribal Court which exercises civil jurisdiction over all cases involving enrolled members of the Tribe. Plaintiff has available to him an adequate remedy in the Ute Indian Tribal Court;

he will not be left remediless by the dismissal of this action.

The U.S. Supreme Court, in the recent case of United States v. Mazurie, 419 U.S. 544, 42 L. Ed. 2d 706, 717, 95 S. Ct. ___ (1975), restated the holding of Williams v. Lee which confirmed the propriety of requiring non-Indians to pursue their remedies in tribal courts for claims against Indians arising on Indian reservations.

> In holding that the authority of tribal courts could extend over non-Indians, insofar as concerned their transactions on a reservation with Indians, we stated: "It is immaterial that respondent is not an Indian. He was on the Reservation and the transaction with an Indian took place there. [Citations omitted.] The cases of this Court have consistently guarded the authority of Indian governments over their reservations. ***"

CONCLUSION

This case is of extreme importance to every Indian in the State of Utah, as well as to the defendant. It poses the crucial question of what circumstances may justify a state court in interposing itself into Indian reservation matters.

In this case the State District Court asserted that it had authority to enter a default judgment against an Indian who had been served by a state officer in Indian country, in an action arising from an automobile accident occurring within an Indian reservation, all of which is contrary to federal law and the express provisions of Section 63-36-9 et seq. U.C.A. 1953 (1975 Pocket Part).

Both subject matter and personal jurisdiction being absent herein, this Court should reverse the Order of the District Court and order the dismissal of this action.

RESPECTFULLY SUBMITTED this 20th day of February, 1976.

BOYDEN, KENNEDY, ROMNEY & HOWARD

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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing brief were served upon Robert M. McRae, of Hatch, McRae & Richardson, 370 East Fifth South, Salt Lake City, Utah 84111, by First Class Mail, postage prepaid, this 20th day of February, 1976.

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